

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VICTOR CORTES ARRELLANO, AND ON BEHALF
OF ALL UNAMED PLAINTIFFS SIMILARLY
SITUATED,

Plaintiffs,

vs.

XPO LOGISTICS PORT SERVICES, LLC; and DOES 1
through 50, inclusive,

Defendants.

Case No. 2:18-cv-08220-RGK-E
Related Case No. 2:18-cv-03736-RGK-E

**NOTICE OF CLASS ACTION SETTLEMENT
("SETTLEMENT NOTICE")**

To: All current and former drivers who (1) personally entered into an Independent Contractor Operating Contract ("ICOC") with XPO Port Services, Inc., XPO Logistics Port Services, LLC, and XPO Logistics, Inc., XPO Logistics Cartage, LLC (formerly XPO Port Services Inc.), and XPO Logistics Inc. (hereinafter, "XPO") in California, where the ICOC was operative at any time from March 28, 2013, to the date of this notice (the "Class Period"); (2) performed services for XPO in California during the Class Period; and (3) were classified by XPO as an independent contractor (the "Class"). (NOTE: The Class referenced herein specifically excludes those individuals who entered into an ICOC on behalf of a corporate entity, who did not enter into an ICOC with XPO and instead performed services for XPO as second-seat drivers, and who previously fully settled, in other litigation, all claims related to weeks during the Class Period in which they contracted with XPO).

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Victor Cortez Arrellano v. XPO Port Service Inc.*, Case No. 2:18-cv-08220-RGK-E ("Arrellano"), and *Edgardo Villatoro et al. v. XPO Logistics Port Services, LLC et al.*, Central District Case No. 2:19-cv-09199-RGK-E ("Villatoro") (collectively, the "Lawsuit"). The Lawsuit is currently pending in the United States District Court for the Central District of California ("Central District"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. XPO's records show that you contracted with XPO as a Driver at some point between March 28, 2013, and the date of this Settlement Notice. The Court ordered that this Settlement Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this Settlement Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in or object to the Settlement. If the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Reynaldo Gomez Acosta, Servando Avila Luciano, Felix Nunez Duarte, Edgardo Villatoro, Manuel de Jesus Martinez Mejia, and Gerald Daniels (collectively named "Plaintiffs") brought this Lawsuit against XPO, seeking to assert claims on behalf of a "class" of Drivers who contracted with XPO. Plaintiffs are known as the "Class Representatives," and their attorneys, who also represent the interests of all Class Members, are known as "Class Counsel."

Plaintiffs’ operative Complaint asserted the following causes of action: (1) Misclassification of Employees (Cal. Labor Code § 226.8(a)(1)); (2) Deductions from Wages and Failure to Indemnify (Cal. Labor Code §§ 221, 224, 226, 2802); (3) Unpaid Minimum Wages (Cal. Labor Code §§ 1194, 1194.2, 1197); (4) Failure to Pay Wages Due at Separation (Cal. Labor Code § 203); (5) Failure to Pay All Wages Owed Every Pay Period (Cal. Labor Code § 204); (6) Failure to Provide Meal Periods (Cal. Labor Code §§ 226.7, 512); (7) Failure to Provide Rest Periods (Cal. Labor Code §§ 226.7, 512); (8) Failure to Furnish Timely and Accurate Wage Statements (Cal. Labor Code §§ 226, 226.3); (9) Unfair Competition (Cal. Bus. & Prof. Code §§ 17200 et seq.); and (10) Violations of California’s Private Attorneys General Act (“PAGA”) (Cal. Labor Code § 2698 et seq.).

XPO denies that it has done anything wrong. XPO further denies that it owes Class Members any wages, restitution, penalties, or other damages. XPO strongly believes that the drivers it contracts with have always been properly classified as independent Owner-Operators. The Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of XPO, which expressly denies all liability. The Court has not ruled on the ultimate merits of Plaintiffs’ claims. However, to avoid additional expense, attorney’s fees, costs, inconvenience, and interference with its business operations, XPO has made the decision that it is in the best interests of all parties to settle the Lawsuit on the terms summarized in this Settlement Notice. The Court has only determined that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable. A final determination on whether the Settlement is fair, adequate, and reasonable will be made at the Final Approval hearing.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to XPO, XPO’s current financial condition, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

Who are the Attorneys?

<p>Attorneys for Plaintiff/Class Members:</p> <p>GOMEZ LAW GROUP Alvin M. Gomez Stephen Noel Ilg Frank Zeccola 2725 Jefferson Street, Suite 3 Carlsbad, California 92008 Telephone: (858) 552-0000 Facsimile: (760) 542-7761</p>	<p>Attorneys for Defendant XPO:</p> <p>O’MELVENY & MYERS LLP Scott Voelz Christianna K. Mantas Allison Bader Andrew Weisberg 400 South Hope Street, 18th Floor Los Angeles, CA 90071 Telephone: (213) 430-6000 Facsimile: (213) 430-6407</p>
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What are the core terms of the Settlement?

On September 16, 2020, the Court certified the Class as follows:

All individuals who (1) personally entered into an Independent Contractor Operating Contract (“ICOC”) with XPO Port Services, Inc., XPO Logistics Port Services, LLC, and XPO Logistics, Inc., XPO Logistics Cartage, LLC (formerly XPO Port Services Inc.), and XPO Logistics Inc. (hereinafter, “XPO”) in California, where the ICOC was operative at any time from March 28, 2013, to the date of this notice (the “Class Period”); (2) performed services for XPO in California during the Class Period; and (3) were classified by XPO as an independent contractor (the “Class”). (NOTE: The Class specifically excludes those individuals who entered into an ICOC on behalf of a corporate entity, who did not enter into an ICOC with XPO and instead performed services for XPO as second-seat drivers, and who previously fully settled, in other litigation, all claims related to weeks during the Class Period in which they contracted with XPO).

Class Members will be automatically bound by the Settlement and will release their claims against XPO as described below (referred to as “Settlement Class Members”).

XPO has agreed to pay \$9,500,000.00 (the “Class Settlement Fund”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, Class Counsel’s Award and costs, administration costs, payment to the LWDA, and the Class Representative awards.

The following deductions from the Class Settlement Fund will be requested by the parties:

- **Administrator Costs.** The Court has approved Phoenix Class Action Administration Solutions to act as the “Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Parties will request up to \$9,500.00 from the Class Settlement Fund to pay the administration costs.
- **Class Counsel Award and Costs.** Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Class Settlement Fund. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Class Settlement Fund, which is estimated to be \$3,166,350.00, as reasonable compensation for the work Class Counsel performed, and will continue to perform, in this Lawsuit through Settlement finalization. Class Counsel also will also request reimbursement of up to \$135,000.00 for verified costs which Class Counsel incurred in connection with the Lawsuit.
- **Class Representative Service Awards.** Class Counsel will ask the Court to award the Class Representatives a service award in the amount of \$10,000.00 to compensate each Class Representative for his service and extra work provided on behalf of Class Members and in exchange for a broader general release between each Class Representative and the Released Parties.
- **PAGA Payment to the State of California.** The parties have agreed to allocate \$20,000.00 towards the Settlement of the PAGA claims in the Lawsuit. \$15,000.00 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$5,000.00 will be allocated to Settlement Class Members.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Class Settlement Fund will form the Net Settlement Fund (“NSF”), **which will be distributed to all Class Members who submit a completed Form W-9 within 45 days after date this Settlement Notice is mailed** (described below). **YOU MUST SUBMIT A FORM W-9 TO PARTICIPATE IN THE SETTLEMENT.** The NSF is estimated at approximately \$6,114,150.00. Each Settlement Class Member who contracted with XPO from March 28, 2013, through the earlier of December 31, 2021 or the date on which the Court grants final approval of the Settlement, will be entitled to a Settlement Payment based on the proportionate number of weeks the Class Member contracted with XPO as a Driver during the time period of March 28, 2013, through the earlier of December 31, 2021 or the date on which the Court grants final approval of the Settlement.

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Payments will be mailed to all Settlement Class Members who **submit a completed Form W-9 within 45 days after date this Settlement Notice.**

Allocation and Taxes. The Settlement Payment is allocated by the Parties to compensate for the reimbursement of expenses (whether deducted from contractual payments to Plaintiffs or their affiliated entities or paid separately by Plaintiffs), wages, and interest. No representation has been made to the Plaintiffs, Class Members, or their attorneys by XPO regarding the taxability of any portion of the payments under this Agreement. Plaintiffs, Class Members, and Class Counsel are solely responsible for their own tax filing and payment obligations arising from this Agreement, except that the Settlement Administrator will provide Plaintiffs, Class Members, and Class Counsel with copies of IRS Forms 1099 for any payments the Class Settlement Fund makes to them under this Agreement.

Release. If the Court approves the Settlement, and after the third-party Claims Administrator mails out final payment by XPO, each Settlement Class Member will fully release and discharge XPO, and its consolidated subsidiaries, successors, predecessors, assigns, affiliates, parent companies, shareholders, officers, directors, agents, insurers, attorneys, and employees; and (b) XPO’s past, present, and future shareholders, officers, directors, agents, employees, attorneys, and insurers (collectively the “Releasees”) from the following “Class Member Released Claims” for the entire Class Period:

All claims, actions, causes of action, administrative claims, demands, debts, damages, penalties, costs, interest, attorneys’ fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, which: (i) are owned or held by Named Plaintiffs and Class Members and/or by their Related Entities (if any), or any of them, as against Releasees, or any of them; (ii) arise under any statutory or common law claim which was asserted in either the Operative Complaint,

or in any of the prior complaints in the Lawsuit or, whether or not asserted, could have been brought arising out of or related to the allegations of misclassification of Named Plaintiffs and Class Members as independent contractors set forth in the Operative Complaint, and (iii) pertain to any time in the Release Period. The Released Claims include any known or unknown claims for damages and injunctive relief. The Released Claims include but are not limited to, claims under California Labor Code §§ 200 et seq., 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 210, 212, 213(d), 218.5, 218.6, 221, 222, 222.5, 223, 224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, 232(c), 232.5(c), 233, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 432.5, 512, 558, 1174, 1194, 1194.2, 1197, 1197.1, 2698 et seq., 2699 et seq., 2699.3, 2699.5, 2800, 2802, 2804; Industrial Welfare Commission Wage Order No. 9-2001; California Business and Professions Code §§ 17200 et seq.; California Code of Civil Procedure §§ 382, 1021.5; California Civil Code §§ 3287, 3288; repair and maintenance expense reimbursement claims; any alleged or contemplated claims of retaliation; and common law claims for fraud, breach of contract, rescission, unjust enrichment, or declaratory judgment.

The Class Member Released Claims are further defined as:

Any and all claims, actions, causes of action, administrative claims, demands, charges, debts, damages, penalties, interest, costs, attorneys' fees, obligations, judgments, expenses, or liabilities, in law or in equity, whether now known or unknown, contingent or absolute, that a Plaintiff, on behalf of himself had, has or could have had against the Releasees by reason of any act, omission, harm, matter, cause, or event whatsoever, whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source of law or contract, arising or accruing at any time in the Release Period, for any type of relief, including without limitation wages, pay, unpaid/unreimbursed costs, deductions, penalties, general damages, compensatory damages, liquidated damages, punitive damages, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief.

Participating Class Members will be deemed to have released any and all claims under the Fair Labor Standards Act ("FLSA") when they cash, deposit, or otherwise negotiate their first settlement check.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How much can I expect to receive from the Settlement?

The amount of money you are entitled to receive from this settlement (your "Individual Settlement Payment") is based on the number of weeks you contracted with XPO during the Class Period. According to XPO's records:

- (a) You contracted with XPO as a Driver for «Total_Weeks» weeks from March 28, 2013, through the earlier of (i) the day data was gathered to send this notice, (ii) December 31, 2021, or (iii) the date upon which the Court grants final approval of the Settlement.
- (b) The estimated settlement dollar value for each week you contracted with XPO as a Driver during the Class Period is \$383.60. (Note that the final calculation will be based on data that may include a few extra weeks of time.)

Based on the above, your Individual Settlement Payment is estimated at «Est_Set_Amt».

Dispute Information in this Notice of Settlement.

Your award is based on the number of weeks you contracted with XPO as a Driver during the Class Period. The information contained in XPO's records regarding each of these factors, along with your estimated Settlement Payment, is listed above. If you disagree with the information listed above, you may submit a written dispute, along with any supporting documentation, to Phoenix Settlement Administrators, P.O. Box 7208, Orange, California 92863; (800) 523-5773; notice@phoenixclassaction.com. The deadline to dispute the Gross Individual Settlement Payment or the dates a Class Member contracted with Defendant as a Driver as listed on a Claim Form will be within the 45-day Objection Deadline Date. Any disputes, along with supporting documentation, must be postmarked no later than **December 6, 2021**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties will investigate any dispute in consultation with the Administrator. The Administrator will make the final determination regarding the amount of your Individual Settlement Payment.

What are my options going forward?

1. Participate in the Settlement

You must submit a completed Form W-9 within 45 days after date this Settlement Notice is mailed to participate in the Settlement and receive a share of the Settlement Payment, except that late claims may be accepted based on a showing of excusable neglect, and only in the event that the late claim will not delay distribution of the Class Settlement Fund under the terms of this Agreement. **The W-9 is enclosed and is also available at the website set up for Class Members, www.phoenixclassaction.com/arrellano-v-xpo, which can be submitted by Class Members via mail, facsimile, or email at notice@phoenixclassaction.com.**

2. Object to the Settlement

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. You may object to the Settlement by simply attending the Final Approval Hearing and objecting in person at the Hearing. The Court will hear from any Class Member who attends the Final Approval Hearing and asks to speak regarding his or objection. If you wish to object to the Settlement in writing, or any portion of it, you may mail a written objection to the Administrator at Phoenix Settlement Administrators, P.O. Box 7208, Orange, California 92863, or file a written objection with the Court in Courtroom 850 of the United States District Court for the Central District of California, located at 255 East Temple Street, Los Angeles, CA 90012, Courtroom 850, 8th Floor. Objections must be filed or postmarked no later than **December 6, 2021**.

As described above, if you choose to object to the Settlement in person, you may appear at the Final Approval Hearing scheduled for December 20, 2021, at 9:00 a.m., in Courtroom 850 of the United States District Court for the Central District of California, located at 255 East Temple Street, Los Angeles, CA 90012, Courtroom 850, 8th Floor. Class Members will be apprised of any changes in time or location to the Final Approval Hearing via the website indicated below which has been set up by the parties and the Administrator. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before **December 6, 2021**. All objections or other correspondence must state the name and number of the case, which is *Victor Cortez Arrellano v. XPO Port Service Inc., Case No. 2:18-cv-08220-RGK-E* and *Edgardo Villatoro et al. v. XPO Logistics Port Services, LLC et al., Central District Case No. 2:19-cv-09199-RGK-E* (“*Villatoro*”).

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class members who do not object.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on December 20, 2021, at 9:00 a.m., in Courtroom 850 of the United States District Court for the Central District of California, located at 255 East Temple Street, Los Angeles, CA 90012, Courtroom 850, 8th Floor. Class Members will be apprised of any changes in time or location to the Final Approval Hearing via the website indicated below which has been set up by the parties and the Administrator. You may also contact Phoenix Settlement Administrators, P.O. Box 7208, Orange, California 92863; (800) 523-5773; notice@phoenixclassaction.com or Class Counsel for updates regarding the location of the Final Approval Hearing as the location of the Final Approval Hearing is subject to change. The Court also will be asked to rule on Class Counsel’s request for attorneys’ fees and reimbursement of documented costs and expenses and the Service Awards to the Class Representatives. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. **You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.**

If you appear at the hearing, check the Court’s website for its social distancing protocols <https://www.cacd.uscourts.gov/news/coronavirus-covid-19-guidance>.

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Central District of California Western Division, 255 East Temple Street, Suite TS-134, Los Angeles, CA 90012. You may also contact Class Counsel using the contact information listed above for more information.

You may also visit www.phoenixclassaction.com/arrellano-v-xpo to view the Settlement Agreement, Settlement Notice, or Final Judgment. Class Members will also be apprised of any changes in time or location to the Final Approval Hearing via this website.

PLEASE DO NOT CALL OR WRITE THE COURT, XPO, OR ITS ATTORNEYS FOR INFORMATION

ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

REMINDER AS TO TIME LIMITS

The deadline for submitting a completed Form W-9 or written Objection is December 6, 2021. These deadlines will be strictly enforced. **Once again, if you want to receive your Individual Settlement Payment you must submit a Form W-9 within 45 days after date this Settlement Notice is mailed to participate in the Settlement and receive a share of the Settlement Payment** except that late claims may be accepted based on a showing of excusable neglect, and only in the event that the late claim will not delay distribution of the Class Settlement Fund under the terms of this Agreement.

BY ORDER OF THE COURT ENTERED ON OCTOBER 8, 2021.